

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KERRI H., A MINOR,	:	CIVIL ACTION
by and through her parents,	:	NO. 05-1777
Robert H. and Barbara H.	:	
	:	
And	:	
	:	
ROBERT H. AND BARBARA H., ADULTS,	:	
Individually, and on their own	:	
behalf	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THE MARPLE NEWTOWN SCHOOL DISTRICT,	:	
Defendant.	:	

NEWCOMER, S.J.

August 12, 2005

MEMORANDUM AND ORDER

Presently before the Court is Defendant's Motion to Dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, the Motion is denied. An appropriate order follows.

I. BACKGROUND

Kerri H. and her parents filed a Summons and Complaint on April 18, 2005, seeking compensatory education and monetary damages from the Marple Newton School District (hereinafter referred to as the District). Plaintiffs raise claims for failure to provide a Free Appropriate Public Education (FAPE) and for deficiencies in educational services reflected through individualized education plans (IEPs). This action is brought under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et. seq.*, Section 504 of the Rehabilitation Act of

1973, 42 U.S.C. § 1974 *et. seq.*, and the Civil Rights Act, 42 U.S.C. § 1983.

Kerri H. is a thirteen year-old child with disabilities who has resided and attended school within the District since kindergarten (during the 1997-1998 academic year). She currently attends the Paxton Hollow Middle School. The District receives federal funds allocated to provide educational services to individuals residing in Delaware County, Pennsylvania. Such provisions include those mandated by the IDEA, Section 504, and Pennsylvania's statutory scheme addressing children with disabilities (11 P.S. § 875-101; 22 Pa. Code § 14.131-14.133).

II. LEGAL STANDARD

Under FED. R. CIV. P. 12(b)(6), a defendant may move to dismiss a complaint where plaintiff has failed to state a claim upon which relief may be granted. When deciding a motion to dismiss, the Court may only consider the factual allegations in the Complaint. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994). The Court must accept as true all facts in the Complaint, provided they are not conclusory allegations, bald assertions, or conclusions of law, and draw all reasonable inferences therefrom in the light most favorable to the Plaintiff. See In re Burlington Coat Factory Sec. Lit., 114 F.3d 1410, 1429 (3d Cir. 1997); Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989). The Court will only grant a

motion to dismiss under a Rule 12(b)(6) motion where Plaintiff is not entitled to relief "under any reasonable reading of the pleadings." Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir. 1993).

III. DISCUSSION

The Third Circuit has held that a child's rights are not held jointly with the parents' rights under the IDEA. See Collinsgru v. Palmyra Bd. of Educ., 161 F.3d 225, 236 (3d Cir. 1998) (finding legislative intent does not support the creation of joint rights in parents under the IDEA). Although parents do not possess the same substantive rights as their children, the IDEA grants parents of special needs children specific procedural rights enforceable in federal court. See Dombrowski v. Wissahickon Sch. Dist., No. 01-5094, 2003 U.S. Dist. LEXIS 19481, at *23 (E.D. Pa. Oct. 1, 2003) (holding a parent may recover for sums she expended and losses stemming from efforts to provide her child with education services when the school district failed to fulfill its obligation).

In Plaintiffs' response, Kerri's parents argue that their 42 U.S.C. §1983 claims arise from: (1) violations of their own procedural rights under federal special education laws to fully participate in their daughter's educational programing when someone allegedly forged Kerri's mother's signature on her progress reports, which were subsequently destroyed; and (2)

denial of their consortium rights with respect to their daughter due to the harm to Kerri by the District's inappropriate educational programming. (Pl.'s Resp. at 6). Because the Plaintiffs' second assertion of denial of consortium rights is not alleged in the Complaint, Plaintiffs are granted leave to amend.

With respect to Plaintiffs' first assertion, the Third Circuit has held that procedural violations of IDEA that "seriously deprive parents of their participation rights are actionable." C.M. v. Bd. of Educ., 128 Fed. Appx. 876, 880 (3d Cir. 2005). To this end, the deprivation of Kerri's parents' rights to participate in their daughter's education may be inferred from the face of the Complaint. Kerri's parents independently seek relief for the District's alleged "deliberate destruction of documents in which the signature of Kerri's parents had been forged." (Compl. at ¶ 1). Kerri's parents became aware of the alleged forgery when they confronted the District about not receiving progress reports from the school as required "to comply with Kerri's IEP." (Compl. at ¶ 30). In response, the District presented Kerri's parents with progress reports which allegedly contained Kerri's mother's signature, but which the parents claim were forgeries. (Compl. ¶ 30). Kerri's parents requested the District investigate the matter, but the results were inconclusive "as to the identity of the District

staff person(s) who forged the signature." (Compl. ¶ 31).

Kerri's parents further asked the District Attorney's Office to conduct a handwriting analysis investigation of the allegedly forged documents, but it proved impossible when the District stated the "documents were no longer in Kerri's files and had apparently been destroyed." (Compl. ¶ 32). Based on the facts as alleged in the Complaint, this Court finds that Kerri's parents have sufficiently raised a claim for deprivation of their own procedural rights. Because the question of whether Kerri's parents' procedural rights were violated depends on a factual determination of whether a forgery took place, Defendant's Motion to Dismiss must be denied pursuant to FED R. CIV P. 12(b)(6).

An appropriate order follows.

S/ Clarence C. Newcomer
United States District Judge

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Individually, and on their own	:	
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Plaintiffs,	:	
	:	
v.	:	
	:	
THE MARPLE NEWTOWN SCHOOL DISTRICT,	:	
Defendants.	:	

O R D E R

AND NOW, this 12th day of August, 2005, upon consideration of Defendant's Motion to Dismiss (Doc. 5) and Plaintiffs' Response, it is hereby ORDERED that said Motion is DENIED. It is further ORDERED that Plaintiffs are GRANTED leave to amend their Complaint with respect to the alleged denial of consortium rights.

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge